

02 MAY 31 PM 3:36
ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

Docket No. TSCA-07-2002-0139

Introduction

The Complainant, by delegation from the Administrator of the United States Environmental Protection Agency (EPA), and the Regional Administrator, EPA, Region 7, is the Director, Air, RCRA, and Toxics Division, EPA, Region 7. The Respondents are Willard Ditter and Dawn Ditter, 204 N. 9th Street, Norfolk, Nebraska 68701.

Complainant's Allegations

Complainant has reason to believe that Respondents have violated Section 409 of TSCA, 15 U.S.C. § 2689, by failing to comply with the regulatory requirements of 40 C.F.R. part 745, subpart F - Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property ("Disclosure Rule"), which was promulgated pursuant to Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d. Specifically, Complainant alleges:

Count I

1. Willard Ditter and Dawn Ditter ("Respondents") are individual persons.
2. For all periods of time relevant to the violation alleged herein, Respondents owned a residential property located at 55770 853 Road, Pierce, Nebraska (the "Property").
3. The Property was constructed prior to 1978.
4. The Property is "target housing" as defined by 40 C.F.R. § 745.103.
5. On or about June 6, 2001, Respondents entered into a rental agreement (the "Contract") with Ron and Mylee Leffel for the lease of Respondents' Property for residential use.
6. As a result of the Contract described in Paragraph 5 above, Respondents became "lessors", and Ron and Mylee Leffel became "lessees", as those terms are defined by 40 C.F.R. § 745.103.
7. Ron and Mylee Leffel subsequently moved into the Property along with their two children whose ages were approximately one year old and nine years old at the time.
8. Pursuant to 40 C.F.R. § 745.107(a)(1), before the lessee is obligated under any contract to lease target housing, the lessor of target housing must provide the lessee with an EPA-approved lead hazard information pamphlet.

9. Respondents did not provide an EPA-approved lead hazard information pamphlet to Ron and Mylee Leffel prior to being obligated under the rental Contract described in Paragraph 5 above.

10. Respondents' failure to provide an EPA-approved lead hazard information pamphlet to Ron and Mylee Leffel prior to being obligated under the rental Contract described in Paragraph 5 above is a violation of 40 C.F.R. § 745.107(a)(1) and Section 409 of TSCA.

CONSENT AGREEMENT

1. For the purposes of this proceeding, Respondents admit that Complainant has jurisdiction to bring this action pursuant to the statutory and regulatory provisions cited above, and neither admit nor deny Complainant's factual allegations above.

2. Respondents waive their right to contest Complainant's allegations above, and their right to appeal the Final Order accompanying this Consent Agreement.

3. Respondents and Complainant agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.

4. Respondents certify by the signing of this Consent Agreement and Final Order that to the best of Respondents' knowledge, they are presently in compliance with all requirements of 40 C.F.R. part 745, subpart F - Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property ("Disclosure Rule").

5. Respondents consent to the issuance of the Final Order hereinafter recited and consent to the payment of a civil penalty in the amount of Five Hundred Dollars (\$500.00) to be paid within forty-five (45) days of the effective date of the Final Order.

Final Order

Pursuant to the provisions of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2601 et seq., and based upon the information set forth in the Consent Agreement accompanying this Final Order, IT IS HEREBY ORDERED THAT:

1. Respondents shall pay a civil penalty of Five Hundred Dollars (\$500.00) due within forty-five (45) days of the effective date of the Final Order. Such payment shall identify the Respondents by name and docket number and shall be by certified or cashier's check made payable to the "United States Treasury" and remitted to:

EPA-Region 7
c/o Mellon Bank
P.O. Box 360748M
Pittsburgh, Pennsylvania 15251.

2. A copy of the check must be sent simultaneously to each of the following:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 7
901 N. 5th Street
Kansas City, Kansas 66101; and

Mike Gieryic
Office of Regional Counsel
U.S. Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101.

3. Respondents and Complainant shall bear their own costs and attorneys' fees incurred as a result of this matter.

RESPONDENTS:
WILLARD DITTER and
DAWN DITTER

Date 5-14-02

By Willard Ditter
Willard Ditter

Date 5-14-02

By Dawn Ditter
Dawn Ditter

COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY

Date 5/22/02

By William A. Spratlin
for William A. Spratlin
Director
Air, RCRA, and Toxics Division

Date 5/23/02

By Mike Gieryic
Mike Gieryic
Assistant Regional Counsel

IT IS SO ORDERED. This Final Order shall become effective immediately.

Robert L. Patrick
Robert L. Patrick
Regional Judicial Officer

Date May 31, 2002

IN THE MATTER OF Willard Ditter and Dawn Ditter, Respondents
Docket No. TSCA-07-2002-0139

CERTIFICATE OF SERVICE

I certify that the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:


Copy hand delivered to
Attorney for Complainant:

Michael Gieryic
Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by First Class Mail Return Receipt:

Willard Ditter and Dawn Ditter
204 N. 9th Street
Norfolk, Nebraska 68701

Dated: 6/3/02


Kathy Robinson
Regional Hearing Clerk